Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1022

M. M. MILES, JACK R. WOOD, and JACQUELINE S. WOOD,
Petitioners

v.

THE HON. J. FOY GUIN, JR. U. S. DISTRICT JUDGE, and
BANK OF HEFLIN, a corporation
Respondents

BRIEF OF THE STATE OF ALABAMA, THROUGH ITS ATTORNEY GENERAL, AS AMICUS CURIAE

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INDEX

	Page
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF THE CASE	4
ARGUMENT	4
CONCLUSION	13
APPENDIX I—*Complaint* filed in the Circuit Court of Alabama (Seventh Circuit, Cleburne County) by the respondent Bank of Heflin on 26 August 1974	1a
APPENDIX II—*Reply Brief of Bank of Heflin to: Brief of Intervening Defendants in Support of Motion to Dismiss* filed in the United States District Court for the Northern District of Alabama in Civil Action 76-G-0791-E	4a
APPENDIX III—Title 10, Section 21 (46), Code of Alabama (1940) (Recomp. 1958)	10a

TABLE OF CITATIONS

CASES CITED — Page

Atlantic Coast Line R. Co. v. *Brotherhood of Locomotive Engineers*, 398 U. S. 281, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970) 9

Boyle v. *Landry*, 401 U. S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971) 4

Byrne v. *Karalexis*, 401 U.S. 216, 91 S.Ct. 777, 27 L.Ed.2d 792 (1971) 7

Doran v. *Salem Inn, Inc.*, 422 U. S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) 7

Dyson v. *Stein*, 401 U. S. 200, 91 S.Ct. 769, 27 L.Ed.2d 781 (1971) 7

Gibson v. *Berryhill*, 411 U. S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973) 10

Huffman v. *Pursue, Ltd.*, 420 U. S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 1200 (1975) 10

Lake Carriers' Ass'n. v. *MacMullan*, 406 U.S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972) 7

Leiter Minerals, Inc., v. *United States*, 352 U. S. 220, 77 S.Ct. 287, 1 L.Ed.2d 267 (1957) 6

Lynch v. *Household Finance Corp.*, 405 U. S. 538, 92 S.Ct. 113, 31 L.Ed.2d 424 (1972) 5

Mitchum v. *Foster*, 407 U. S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972) 7

N.L.R.B. v. *Nash-Finch Co.*, 404 U. S. 138, 92 S.Ct. 373, 30 L.Ed.2d 328 (1971) 6

Page

Perez v. *Ledesma*, 401 U. S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971) 7

Rizzo v. *Goode*, 433 U. S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976) 10

Rooker v. *Fidelity Trust Co.*, 263 U. S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) 11

Samuels v. *Mackell*, 401 U. S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1961) 7

Wisconsin v. *Constantineau*, 400 U. S. 433, 91 S.Ct. 507, 29 L.Ed.2d 515 (1971) 5

Younger v. *Harris*, 401 U. S. 37, 44, 91 S.Ct. 746, 750, 27 L.Ed.2d 669 (1971) 4

STATUTES CITED — Page

12 U.S.C. §1811 6

28 U.S.C. §2283 6

42 U.S.C. §1983 8

Title 10, Section 21 (46), Code of Alabama (1940) (Recomp. 1958) 2

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BRIEF OF THE STATE OF ALABAMA, THROUGH ITS ATTORNEY GENERAL, AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The issues involved in the petition filed by the petitioners with this Court directly involve the interest of the State of Alabama in preserving the integrity of its system of judicial administration and the finality or orderly review of the judgments rendered thereby. The State of Alabama is *not* concerned with the merits of the controversy between the private litigants and expresses (and wishes to be understood to express) no opinion or preference with respect to the case itself.

The importance of the jurisdictional and procedural issues here involved, however, impels the State of Alabama, through its Attorney General, to join with the petitioners to the limited extent of praying that this Court will grant the writ requested, will hear the case, and will order the United States Court of Appeals for the Fifth Circuit to revise its ruling herein and grant the writ of prohibition prayed for from it.

The interest of the State of Alabama arises from these facts: The respondent the Bank of Heflin (Bank), a banking corporation created by and existing under the laws of the State of Alabama, in a dispute with one (later three) of its shareholders, commenced an action (the complaint is Appendix I hereto) in the court of general jurisdiction of the State of Alabama which grew out of the assertion by the shareholders of rights claimed to exist under a statute of the State of Alabama (Title 10, Section 21 [46], Code of Alabama [1940] [Recomp. 1958], reproduced as Appendix III hereto). Appendix E (Petition, p. 16a). The Bank's claim was acted upon by the Alabama trial court, which issued a final judgment thereon. Following the entry of that order, the petitioners applied to the Supreme Court of Alabama for a writ of mandamus addressed to the trial judge and directing him to revise his order; in addition to the application for the writ of mandamus, the petitioners appealed to the Supreme Court of Alabama from certain aspects of the same order.

The application for the writ of mandamus resulted (after the filing of briefs and oral argument) in the issuance of a rule nisi to the trial judge. He responded through counsel for the Bank and, after the filing of additional briefs and another oral argument, a decision was made by the Supreme Court of Alabama and its opinion setting forth reasons therefor was published. Appendix E (Petition, p. 16a). Upon the

announcement of that decision the respondent judge, again through counsel for the Bank, filed an application for a rehearing and a supporting brief. That application was denied and the judgment of the Supreme Court of Alabama issued.

The appeal from other aspects of the trial court's order proceeded in due course to submission upon briefs and reply briefs of these petitioners and the Bank and upon oral argument. The decision of the Supreme Court of Alabama (Appendix F [Petition, p. 23a]) on the appeal again was followed by an application for a rehearing, which was supported by an elaborate and extended brief and was accompanied by a "motion for special relief." After careful consideration by the Supreme Court of Alabama, which resulted in an amplification of its original opinion (Appendix G [Petition, p. 35a]), the application and accompanying motion were denied and the judgment of the Supreme Court of Alabama became final.

The Bank did not petition this Court for the issuance of its writ of certiorari to review either decision of the Supreme Court of Alabama. Instead, on the day next following the last day on which such a petition to this Court could have been filed, the action now pending before Judge Guin in the United States District Court for the Northern District of Alabama was started. The thrust of that action is to obtain a review of and, through the device of an order to the prevailing parties enjoining them from enforcing the judgments which they won, a reversal of the decisions of the Supreme Court of Alabama.

The assumption of jurisdiction by the District Court over the dispute between the Bank and the petitioners under these circumstances is a departure from the governing principles of federalism of such significance that the State of Alabama must come forward to urge correction of the situation by this Court.

STATEMENT OF THE CASE

The State of Alabama adopts the *Statement of the Case* in the petition as an accurate summary of the material facts relevant to the purposes of this brief.

ARGUMENT

What is involved here is an important question of federal-state relations, *viz.*, the extent to which the operation of state judicial proceedings shall be free from interference by the federal courts and, except as they properly might be subject to review by this Court, final and conclusive as to the parties to them. There are two different, though related, approaches: the first and more basic requires the application of the general principles of federalism, what this Court has spoken of us "Our Federalism," *Younger* v. *Harris*, 401 U. S. 37, 44, 91 S.Ct. 746, 750, 27 L.Ed.2d 669 (1971); the other and somewhat more narrowly confined is by way of 28 U. S. C. §2283, the anti-injunction act, and this Court's construction of it. Both approaches lead, however, to the same conclusion: the District Court had no jurisdiction to grant the relief prayed for in the Bank's complaint and, upon Judge Guin's denial of the motion to dismiss it, the Court of Appeals ought to have issued the writ of prohibition.

Before proceeding further, because of the persistence with which this subject has demanded the attention of the Court during this decade, it is worth examining what this case does *not* involve. Having got rid of the shell, we shall the more clearly see the kernel.

I

This is *not* a case involving state criminal prosecution or, indeed state action of any kind and there is, therefore, no footing for a claim of bad faith prosecution for the purpose of harassment of the Bank by the State such as figured in *Boyle* v. *Landry*, 401 U. S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971). The

litigation began and has continued as a purely private matter contested by a private banking corporation chartered by the State of Alabama against three of its shareholders, who are individual citizens of Alabama, on issues and claims arising from the terms and provisions of the Alabama Business Corporation Act.

This is *not* a case in which the prior litigation can be said to be something other than "proceedings in a State court . . . ." within the meaning of 28 U. S. C. §2283. On that theory the garnishment proceedings in Connecticut were held to be subject to injunction in *Lynch* v. *Household Finance Corp.*, 405 U. S. 538, 92 S.Ct. 113, 31 L.Ed.2d 424 (1972). It would be difficult to find a dispute more intimately connected to the courts of Alabama than this. Begun by the Bank in 1974, it progressed from the trial court of general jurisdiction to the highest appellate court, there to be heard, in different but related aspects, twice.

This is *not* a case in which there is involved a claim that the applicable statute, Title 10, Section 21 (46), Code of Alabama (1940) (Recomp. 1958) is unconstitutional, "facially" or otherwise. (It is, as a matter of fact, a provision of the Model Business Corporation Act as the latter appeared in 1959, when the Alabama act was enacted.) Thus, the Court is not here dealing with the situation that was before it in such a case as *Wisconsin* v. *Constantineau*, 400 U. S. 433, 91 S.Ct. 507, 29 L.Ed.2d 515 (1971). The Bank has never made this claim either in the state court litigation or in its petition to the District Court. (See the Bank's complaint in the Circuit Court of Alabama [Appendix I hereto], the complaint filed in the District Court [Appendix B (Petition, p. 2a)] and the brief filed by the Bank with the District Court in opposition to the motion to dismiss [Appendix II hereto].) The essence of the claims of the Bank is that the decisions of the Supreme Court of Alabama and its judgments, not the

statute upon which they rest, are unconstitutional.

This is *not* an action in which the United States has a paramount national interest as in *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220, 77 S.Ct. 287, 1 L.Ed.2d 267 (1957). Nor is it one involving a field of law which the federal government has posted as its exclusive "federal domain" as in *N.L.R.B.* v. *Nash-Finch Co.*, 404 U. S. 138, 92 S.Ct. 373, 30 L.Ed.2d 328 (1971). Even if one were to assume, contrary to the facts in this case, that the Federal Deposit Insurance Corporation were somehow involved, the F.D.I.C. does not enjoy the same status as the National Labor Relations Board (*vide* 12 U. S. C. §1811 *et seq.*). It cannot be thought to have exclusive control in this field. The regulation of the state chartered banks is primarily a responsibility of the States themselves and the two systems of regulation amiably have co-existed since the creation of the F.D.I.C. The F.D.I.C. is not now involved, though, and nothing could make that more plain than the orders entered by Judge Guin on 26 November 1975 (Appendix H [Petition, p. 42a]) and on 3 September 1976 (Appendix D [Petition, p. 14a]). The limited relationship of the F.D.I.C. to the dispute between these petitioners and the Bank began after they had been lawing with each other for more than a year and terminated completely some six months before the entry of the judgment of the Supreme Court of Alabama which the Bank has asked the District Court to overturn. The connection was tenuous, peripheral, and short-lived and cannot influence the disposition of this petition.

This is *not* a case in which there is some danger that claims decided by a federal court will be "relitigated," in which a federal court had assumed prior jurisdiction of the *res*, or in which applies any of the specific exceptions to 28 U. S. C. §2283 identified in the opinion in

Mitchum v. *Foster*, 407 U. S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972). As the petitioners have pointed out, the decision of the District Court regarding the reports of examination of the F.D.I.C. (Appendix H [Petition, p. 42a]) scrupulously has been honored by them ever since the order was handed down. And, as reference to the Bank's complaint in the Circuit Court of Alabama (Appendix I hereto) and to the opinions of the Supreme Court of Alabama (Appendices E, F, and G [Petition, pp. 16a, 23a, and 35a]) makes clear, the Bank, ostensibly relying upon a supposed confidential relationship between it and all who dealt with it, refused for no proper purpose to permit the examination by its shareholders of *any* of its books and records, not just reports of examination of the F.D.I.C.

This is *not* a case in which anticipatory relief is requested. *Younger* v. *Harris, supra.*, and its companion cases, *Samuels* v. *Mackell*, 401 U. S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1961), *Boyle* v. *Landry*, 401 U. S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971), *Perez* v. *Ledesma*, 401 U. S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971), *Dyson* v. *Stein*, 401 U. S. 200, 91 S.Ct. 769, 27 L.Ed.2d 781 (1971), and *Byrne* v. *Karalexis*, 401 U. S. 216, 91 S.Ct. 777, 27 L.Ed.2d 792 (1971), attached considerable importance to the contemporaneous pendency of prosecutions in which the very issues presented to the federal courts could be resolved. This Court dispelled any doubt that federal courts could address the question of the constitutionality of statutes and, presumably, other legislation and rules having the effect of law, in the absence of pending or threatened prosecutions or proceedings to enforce them in *Lake Carriers' Ass'n.* v. *MacMullan*, 406 U. S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972). See also *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975). The situation here is different from those in

both *Younger* and *Lake Carriers'*. The decision about which the Bank complains is not one which it fears in the event that litigation ensues nor is the litigation which might produce it now in progress. It has been rendered and the Bank, which had the opportunity in two separate appearances, each followed by an application for a rehearing, to argue to the Supreme Court of Alabama every constitutional issue which it wishes the District Court to decide, lost. On neither occasion did it petition this Court for a writ of certiorari to review the decision of the Supreme Court of Alabama. For it, school is out.

This is *not* a case under 42 U. S. C. § 1983 and, thus, within the exception to the anti-injunction act (28 U. S. C. §2283) carved out by *Mitchum* v. *Foster, supra.* The Bank filed the civil action against its shareholders, the petitioners here, *and filed it in the state court.* The shareholders/petitioners responded by filing a counterclaim under the same section of the Alabama Business Corporation Act that the Bank asked to be construed. It would be a strange result indeed if an energetic defense of a civil suit between private parties which ultimately proves to be successful is actionable under 42 U. S. C. §1983. If it were so, this Court would have to be prepared to acquiesce in the trial in the federal courts of every civil action in the land.

II.

As none of the exceptions to the general prohibition set forth in the anti-injunction statute (28 U. S. C. §2283), either those expressed in the statute itself or implied by this Court (see the analysis in *Mitchum* v. *Foster, supra),* here is applicable, the ban of that statute is a full and sufficient reason why the District Court has no jurisdiction to hear the Bank's complaint to it.

This Court, in *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers,* 398 U. S. 281, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970), flatly rejected the idea that the statute could be loosely construed. The history of the statute and the reasoning behind it in Mr. Justice Black's opinion in that case were amplified by Mr. Justice Stewart in *Mitchum.* But *Mitchum* adhered to the doctrine of *Atlantic Coast Line,* though the Court there concluded that actions founded upon 42 U. S. C. §1983 fell within the "expressly authorized" exception to the anti-injunction statute. As has been pointed out above, the action filed in the District Court is not, cannot be grounded upon 42 U. S. C. §1983, and none of the other exceptions--all set forth in *Mitchum*--fits.

If the District Court were to have jurisdiction to issue the injunction prayed for by the Bank, all of the mischief anticipated by the drafters of 28 U. S. C. §2283 would follow. What judgment of any court without the federal system would be safe from collateral attack? At a time when the nation's judicial machinery labors under almost overwhelming case loads, how could the federal courts respond to the deluge? What man could afford to litigate to protect his private rights if he must face first a trial and appeal to every level of the state judicial structure followed by a trial and appeal through the federal system? The questions answer themselves. The adoption of a construction of the anti-injunction statute which will permit a district court to review and enjoin the enforcement of the judgment of the highest appellate court of a State simply could not be tolerated. The cases cited in the *Argument* in the petition before the Court demonstrate how eagerly the opportunity would be seized. That trickle persists despite the uniform resistance thus far put up by all of the Circuits.

Once the dam is breached, none could doubt that the flood will come.

III

"Our Federalism," as Mr. Justice Black spoke of the federal structure in *Younger*, requires that the courts of the United States refrain so far as possible from interference in the civil functions of the States. (*Huffman* v. *Pursue, Ltd.* 420 U. S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 1200 (1975). "We have consistently required that when federal courts are confronted with requests for such relief (injunctions interfering with state civil functions), they abide by standards of restraint that go well beyond those of private equity jurisprudence." *Ibid.* at 420 U. S. 603, 95 S.Ct. 1208. *Younger* applied the rule when a state criminal prosecution was what was sought to be enjoyed. The same considerations have been held determinative when state licensing procedures are the subject, *Gibson* v. *Berryhill*, 411 U. S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973), when the action is civil in nature under state nuisance laws, *Mitchum* v. *Foster, supra.*, and *Huffman*, and when the claim is one for equitable relief under the Civil Rights Act (42 U. S. C. §1983) in a civil proceeding, *Rizzo* v. *Goode*, 433 U. S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

The proper and long established method for the vindication of private rights, of person or property, guaranteed by the Federal Constitution is by pursuing them through the state courts with review, if appropriate, by this Court on timely petition. *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers, supra., Huffman* v. *Pursue, Ltd., supra.* To permit a losing party in such litigation to enjoin the enforcement of a state court judgment, rendered by a court having jurisdiction of both the parties and of the

subject of the litigation, would, in effect, allow the district courts of the United States to exercise appellate jurisdiction over the highest courts of the States. *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923). This, plainly, is contrary to the intent of Congress and to the language and spirit of the statutes controlling the jurisdiction of the district courts, a jurisdiction conceived to be original and not appellate. *Rooker, supra.*

Is there any reason why the considerations of federalism and comity so well stated *Younger* ought not to apply to civil proceedings such as this? This Court has considered that question in other cases, sometimes in connection with the anti-injunction act (see Note 2 in Mr. Justice Stewart's concurring opinion in *Younger*, 401 U. S. at p. 55, 91 S.Ct. at p. 757). In *Huffman*, the Court answered the question in the negative. *Huffman*, however, as well as *Mitchum* before it, involved circumstances slightly different from these. In each a State was acting, albeit in a civil proceeding, to carry into effect a state policy. (References to this are in *Mitchum*, concurring opinion of Mr. Chief Justice Burger, 407 U. S. at p. 244, 92 S.Ct. at p. 2163, and in the Court's opinion in *Huffman* at 420 U.S., p. 604, 95 S.Ct., p. 1208). But that factor ought to make no difference. A State's interest in the orderly functioning of its courts should be not less highly valued than its interest in its own claims, whether presented through criminal prosecutions or civil proceedings. The *Huffman* decision acknowledged so much. (See, esp., 420 U. S. 592 at 603, 95 S.Ct. 1200 at 1208.)

> "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court [of Indiana] had jurisdiction of both the subject matter and the parties; that a

full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the supreme court of the state on an appeal by the plaintiffs. [Citation omitted.] If the constitutional questions stated in the bill actually arose in the cause, it was the province of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, *but merely left it open to reversal or modification in an appropriate and timely appellate proceeding.* Unless and until so reversed, it would be an effective and conclusive adjudication. [Citations omitted.] Under the legislation of Congress, *no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character.* [Citations omitted.] To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the district courts is strictly original. [Citation omitted.] Besides, the period within which a proceeding might be begun for the correction of errors such as are charged in the bill had expired before it was filed [citations omitted] and as is pointed out in *Voorhees* v. *Jackson,* 10 Pet. 449, 474, 9 L.Ed. 490, 500, after that period elapses an aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly." *Rooker* v. *Fidelity Trust Co.*, supra, at 263 U. S. 415, 68 L.Ed. 365. (Emphasis supplied.)

Rooker fits this case like a glove, and there is no reason to depart from its holding. If the District Court can hear the Bank's complaint, all of the pernicious

consequences anticipated in *Atlantic Coast Line, Younger* and *Huffman,* will follow. (Consider, also, the danger pointed out by Mr. Justice White in his dissenting opinion in *Lynch* v. *Household Finance Co., supra,* 405 U. S. at p. 559, 92 S.Ct. at p. 1125, in his reference to executions on state court judgments.) If anything is clear in this case, it is that the only complaint which the Bank has made to the District Court is that the decisions of the Supreme Court of Alabama were *wrong,* that the court erred. That is nothing more and nothing less than an appeal. How can these petitioners respond to that? By filing with Judge Guin the complete record in the Supreme Court of Alabama and asking him to make his own judgment on the facts and the law. Nothing else is available to them, unless the whole case is to be reopened for a *de novo* trial. The absurdity of the idea is inescapable.

CONCLUSION

This court should not sit by and permit so great a rupture of the fabric of federal-state relations as is here threatened. It must not allow its quite proper concern for the values guaranteed by the Constitution and the Civil Rights Act and for the role of the federal courts in protecting them to blind it to the consequences of allowing those same courts to become courts of appeal from the highest courts of the States in cases where, as here, private litigants are pursuing private rights and remedies in proper forums.

The State of Alabama, as *amicus curiae,* respectfully submits that this Court's writ of certiorari should issue to the United States Court of Appeals for the Fifth Circuit to revise its order denying the issuance of a writ of prohibition to Judge Guin.

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CERTIFICATE OF SERVICE

I, Julian L. McPhillips, Jr., Assistant Attorney General of the State of Alabama and a member of the Bar of the Supreme Court of the United States, certify that I have served upon the Honorable J. Foy Guin, Jr., United States District Judge, United States Courthouse and Federal Building, Birmingham, Alabama 36203, one copy, upon Messrs. Wilson, Propst & Isom, 822 Leighton Avenue, Anniston, Alabama 36201, one copy, upon John S. Casey, Esq., 206 Burns Street, Heflin, Alabama 36264, one copy, upon James D. Pruett, P. O. Box 29, Gadsden, Alabama, 35902, one copy, and upon the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530, three copies, of the foregoing Brief of the State of Alabama, as *amicus curiae*, by depositing the same in a United States Post Office, with first class postage prepaid, addressed to them as shown above, on this day of February, 1977.

/s/ JULIAN L. MCPHILLIPS, JR.
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APPENDIX

APPENDIX I

IN THE CIRCUIT COURT OF CLEBURNE COUNTY, ALABAMA

CIVIL ACTION NO. 1445

BANK OF HEFLIN, a Banking Corporation,
Plaintiff

v.

M. M. MILES, *Defendant*

COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

The plaintiff respectfully represents unto the Court as follows:

1. That plaintiff is a banking corporation organized and existing under the laws of the State of Alabama.

2. That the defendant, M. M. Miles is over the age of twenty-one years, a resident citizen of the State of Alabama, and a stockholder of the said Bank of Heflin.

3. That the defendant has given notice to the plaintiff by letters of August 12 and 19, 1974, whereby he seeks to enforce his rights under the provisions of Title 10, Section 21 (46) of the Code of Alabama 1940 recompiled 1958 as amended. Specifically, defendant requests to "examine all the books and records" and records of customers of the plaintiff. Plaintiff attaches herewith the letter of defendant dated August 12, 1974, as "Exhibit A" and letter of August 19, 1974, as "Exhibit B" and makes their contents a part hereof. Plaintiff further alleges that said code section states in part that any such stockholder "shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of

stockholders and to make extracts therefrom". Plaintiff further alleges that to deny any such stockholder his rights under this particular section of the code would subject the plaintiff to a penalty as described therein.

4. Plaintiff further alleges that it is a banking corporation engaged in the banking business and that as such it is in a fiduciary relationship with its depositors and to those who borrow funds from the plaintiff and that the plaintiff has in its possession many confidential records relating to its depositors, financial statements and records of borrowers, various books and records and reports of examinations by the Federal Deposit Insurance Corporation and the Alabama State Banking Department. That under the law and regulations of the examination authorities that the plaintiff cannot disclose certain information furnished to it and that to do so would place it in violation of certain laws and administrative regulations thereby subjecting it to certain penalties as provided therein. That for plaintiff to reveal certain confidential information relating to its depositors and borrowers would subject it to legal action and penalties for disclosure of confidential files and information relating to its customers and would cause irreparable injury not only to its general reputation, but to its financial condition by the disclosure of this confidential information.

5. Plaintiff further alleges that in view of the demand made upon it by the defendant that there is a justiciable cotroversy existing between the plaintiff and the defendant.

6. Plaintiff offers to the defendant any such books, records of account and other information which this Honorable Court determines is due to him under the law and seeks the protection of this court from the

disclosure of any books, records, or other information in possession of the plaintiff which are of a confidential nature as a result of the plaintiff's fiduciary relationship with its customers and its regulatory authorities.

THE PREMISES CONSIDERED, the plaintiff prays for the following relief:

1. That the Court will set forth in detail the books, records of account, minutes and other information that the defendant is entitled to under the provision of Title 10, Section 21 (46), set the time for such examination and limit the number of defendants agents so as to cause no disruption of plaintiff's daily business activities.

2. That the Court will deny the defendant access to any other books and records of the plaintiff and will enter such orders as may be necessary to protect the plaintiff from an unlawful disclosure of confidential information in its possession as a result of its fiduciary relationship with its depositors and borrowers.

3. That the Court will enter an order denying the defendant access to those books, records and other information which the Court finds to be held by the plaintiff in its fiduciary relationship with its customers in order to protect the plaintiff from an improper disclosure of this information.

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APPENDIX II

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

EASTERN DIVISION

CA 76-G-0791-E

FEDERAL DEPOSIT INSURANCE CORPORATION,
a corporation organized and existing
under the laws of the United States
of America,

Plaintiff

BANK OF HEFLIN, an Alabama banking corporation,

Defendant

v.

M. M. MILES, JACK R. WOOD, and JACQUELINE S. WOOD

Intervening Defendants

REPLY BRIEF OF BANK OF HEFLIN TO:
BRIEF OF INTERVENING DEFENDANT
IN SUPPORT OF MOTION TO DISMISS

I.

We note that Miles, et al., make a point that they made two written demands to see the Bank's records. The first letter obviously did not meet the legal requirements of the Statute. That is what prompted the second demand; not a delay.

In addition, prior to the filing of the declaratory judgment action, there had never been a demand designating a specific date and time to see the records, nor was any "in person" demand ever made at a specific time.

The crux of this case is this:

Notwithstanding the fact that the Supreme Court of Alabama has decided this case in favor of *Miles, et al.*, are the following also true:

1. Is the Supreme Court of Alabama immune from a claim of denial of due process on matters *not voluntarily submitted to it*, where it assumes the role of advocate and grants relief which the party favored does not agrue for?

2. Is it Constitutional to not only say that a party does not win it's law suit, but that it never had a right to file it?

3. Is it Constitutional to deny a party the right to present a defense provided for by statute? The defense of good faith is so provided and was factually raised in the depositions. The Supreme Court of Alabama has never addressed itself to these questions, or even mentioned the words *in any opinion.*

4. Is it Constitutional to decide a matter on a motion filed after the only hearing when there had also been a motion filed to sever this matter from other matters. What possible notice did the Bank have that this motion or its subject matter would be considered?

5. Is it possible to say after considering all the matters in this case, which put the writer of the Supreme Court's opinion in the role of an advocate, that, as the case we have previously cited says, a party should, even if he is not satisfied with the judgment, be satisfied that he has had a fair hearing and a fair consideration of the case. We ask the Court to read our brief which was filed with the Supreme Court and its various opinions (these are attached to our complaint) and determine if this can truly be said. We acknowledge that the matter of the Federal Deposit Insurance Corporation records was only one of the issues in the trial Court. However, did this not entitle the Bank to at least file a suit to determine its rights?

Was it not also at least entitled to have its obligation to reveal deposit and loan records of its customers determined in Court without being subjected to a penalty for failing to do so?

The Supreme Court of Alabama never discussed the obligations of the Bank with reference to Federal Deposit Insurance Corporation records, although, the Bank's position was stated in briefs and even fleetingly alluded to by the Supreme Court.

Miles, et al., says that res judicata is involved. This is not true for two reasons.

(a) No Constitutional question was ever voluntarily submitted to the Supreme Court.

(b) The Supreme Court never decided a Constitutional question. It simply ignored them.

Miles, et al., says this Court does not have original jurisdiction in this case.

Title 28, Section 1343 (3) says this Court has *Original* jurisdiction to redress the deprivation under color of any law, statute, etc., of any right, privilege or immunity secured by the Constitution of the United States, etc.

The present Supreme Court of Alabama obviously has rendered some highly favorable decisions for "Plaintiff" lawyers. In a short time it has abolished governmental immunity without legislation. It has established an "Alabama Version" of strict liability. The writer of the opinion in this case has repeatedly tried to dilute the power of trial judges on motions for new trials. Is it not possible that such orientation could go beyond constitutional bounds. There may be strong allegations, but there is no way for proper consideration to be given them without some Court at least considering these matters from the Bank's point of view. Obviously this has never been done by the Supreme Court of Alabama. It can be done by this Court only after a full hearing.

What the Supreme Court could not effectively advocate on behalf of *Miles, et al.*, it, never discussed

(a) the late filing of the motion granted;

(b) good faith;

(c) meaning of books and records of account;

(d) scintilla rule as applied to this case;

(e) the Bank's evidence of bad faith;

(f) the fact the *Miles, et al.*, argued *against* the relief they were granted:

(g) Why reasonable cause was not a question of fact involving motive, etc., not generally decided on summary judgment;

(h) Federal Deposit Insurance Corporation records;

(i) and on and on.

Miles, et al., say that we could have applied for certiorari to the Supreme Court of the United States. Our answer is as follows:

a. As Judge Rives said in *Brown vs. Chastain* 416 F 2d 1012 (5th Cir 1969) this is a highly doubtful remedy. The odds are 1000 to 1 against even a consideration.

b. This court has *original jurisdiction* under Title 28, Section 1343 (3).

c. There has been no *final judgment* which would support certiorari in that the case is still pending in the Circuit Court of Cleburne County.

d. No Constitutional question has ever been voluntarily submitted to the Supreme Court of Alabama.

e. The Supreme Court of Alabama has never ruled on any questions of the Constitution; just violated it.

In all the cases cited by *Miles, et al.*, the Courts get back to the question of Constitutional questions *voluntarily submitted and decided.*

The cases cited by *Miles, et al.*, are clearly distinguishable. We do not deny that this Court lacks power to review a decision on a matter voluntarily submitted to the Supreme Court for decision. We do not admit that the Supreme Court can deny a constitutional right with impunity or that it is not a state agency just as the legislature or any other body. It should not, on the basis of comity, be placed on a pedestal. To do so would be to claim some sort of superiority or infallibility of judges.

a. The case of *Atchley vs. Greenhill* cited by *Miles* does not indicate that a constitutional question is involved, nor that anything other than a direct review of matters voluntarily submitted was involved.

b. We do not claim, as in *Fortune*, et al., *vs. Town of Lincoln*, that merely an unconstitutional result was obtained, but that the Bank of Heflin has been denied basic constitutional rights to litigate and to be heard on the counter claim or to present its defenses.

c. The case of *Paul vs. Dade Count* is clearly distinguishable in that the constitutional issue involved had been *raised and determined* in a prior state action.

The Court makes an interesting observation in this case at Page 13:

". . . it is clear that Supreme Court (of U.S.) or other appellate review had nothing to do with jurisdictional question decided in Chastain . . .

In *Brown Vs. Chastain*, we said that presentation to the federal court of the *same constitutional* questions already *passed upon by* the state court is a "form of direct federal distinct court review of the state decision . . . ." (emphasis ours).

d. The case of *Francisco Enterprises vs. Kirby* is distinguishable in that the constitutional questions were voluntarily submitted to and decided by the state

court. The Court said that res judicata applied after an adverse *determination* on the merits.

We repeat in this case the Court itself is the one which has denied the rights. It has not *determined* the rights.

e. *Tang vs. Appellate Division* of New York Supreme Court, again, is a case where the constitutionality of a statute was voluntarily submitted to a state court.

f. *Adkins vs. Underwood* was a case where the petitioner was, in effect taking the position that a State Supreme Court had no power of review, It is clearly distinguishable.

g. The case of *Atlantic Coast Line Company vs. Engineers* cited by *Miles* indicates that if, as here, the matter of the right *Miles, et al.*, to see Federal Deposit Insurance Corporation records as determined by the Supreme Court of Alabama was direclty contrary to this matter as determined by this Court, injunction will lie. This is indicated both by the majority and dissenting opinions.

We have previously cited the *Brown vs. Chastain* case, and the *Jack's Hamburger* case to show that the *review doctrine* is applicable only to Constitutional questions voluntarily submitted.

We realize that the cases tend to void overturning State decisions on any basis. However, we submit that this is an extreme example of an appellate court assuming the role of an advocate. All we ask is that this Court give full consideration to the Bank's position.

WILSON, PROPST & ISOM
and JOHN CASEY

APPENDIX III

§ 21 (46). Books and records of corporation.—Each corporation shall keep correct and complete books and records of account and shall keep written minutes of the proceedings of its stockholders and board of directors; and shall keep at its principal office, or at the office of its transfer agent or register, a record of its stockholders, giving the names and addresses of all stockholders and the number and class of the shares held by each.

Any person who shall have been a stockholder of record for at least six months immediately preceding his demand or who shall be the holder of record of at least five per cent of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes, and record of stockholders and to make extracts therefrom.

Any officer or agent who, or a corporation which, without reasonable cause, shall refuse to allow any such stockholder, or his agent or attorney, so to determine and make extracts from its books and records of account, minutes, and record of stockholders, for any proper purpose, shall be liable to such stockholder in a penalty of ten per cent of the value of the shares owned by such stockholder, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of stockholders for any such

purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of stockholders of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a stockholder of proper purpose, irrespective of the period of time during which such stockholder shall have been a stockholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such stockholder of the books and records of account, minutes, and record of stockholders of a corporation.

Upon the written request of any stockholder of a corporation, the corporation shall mail to such stockholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. (1959, p. 1073 § 46, appvd. Nov. 13, 1959).